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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,189	01/29/2001	Sheldon Sturgis	13578.1US01	9119
23552	7590	01/28/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			PASCUA, JES F	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/772,189

Applicant(s)

STURGIS ET AL.

Examiner

Jes F. Pascua

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 17-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/28/2004 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed, lacks antecedent basis for the handle being "non-rigid". This is a new matter rejection.

### ***Claim Rejections - 35 USC § 102***

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 10 11 and 15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by British Patent No. 1 598 843.

It is brought to applicant's attention that page 1, line 20, of British Patent No. 1 598 843 discloses that rice is just one of the many contents that may be packed within the bag. The rice that may be packaged within the British Patent No. 1 598 843 bag meets the recitation "an interior region containing seed".

6. Claims 1-3, 10 and 15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Mochizuki. See Fig. 1<G>.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over British Patent No. 1 598 843 and Schneider et al.

British Patent No. 1 598 843 discloses the claimed device except for the pouring region having a plurality of perforations. Schneider et al. discloses that it is known in the art to provide a plurality of perforations 16 in an analogous pouring region 27. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the pouring region of British Patent No. 1 598 843 with the plurality of perforations of Schneider et al., in order to define a pouring hole.

9. Claims 4-7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mochizuki and Onishi (Japanese Patent No. 0023955).

Mochizuki discloses the claimed device except for the handling hole 19 having additional material and a ring. Onishi discloses that it is known to provide additional material and a ring to an analogous handling hole. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the handling hole of Mochizuki with the additional material and ring of Onishi, in order to reinforce the handling hole.

10. Claims 1-3, 8-10, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mykol and British Patent No. 1 598 843.

Mykol discloses the claimed invention except that Mykol discloses the bag containing water instead of seed. British Patent No. 1 598 843 shows that a bag carrying rice is an equivalent structure known in the art. See page 1, lines 9-21 of British Patent No. 1 598 843. Therefore, because these two pourable products were

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art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute rice for water in the bag of Mykol.

11. Claims 1, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burbridge and British Patent No. 1 598 843.

Burbridge discloses the claimed invention except that Burbridge discloses the bag containing water instead of seed. British Patent No. 1 598 843 shows that a bag carrying rice is an equivalent structure known in the art. See page 1, lines 9-21 of British Patent No. 1 598 843. Therefore, because these two pourable products were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute rice for water in the bag of Burbridge.

### ***Response to Arguments***

12. Applicant's arguments filed 06/28/2004 have been fully considered but they are not persuasive.

Regarding applicant's argument that British Patent No. 1 598 843 does not disclose a "non-rigid handle", British Patent No. 1 598 843 meets the recitation of a "non-rigid handle" to the degree that the material used make the bag, and thus the handle, is flexible and non-rigid.

Regarding applicant's argument that the bag of British Patent No. 1 598 843 does not contain seed as claimed, applicant's attention is directed to page 1, lines 17-21 of British Patent No. 1 598 843, which states, "The flexible bag of the present invention

may also be used for packing flowable solids, such as granulated sugar, rice, detergent powders, granulated fertilizers and the like.” The rice recited in British Patent No. 1 598 843 meets the recitations “a bag...containing seed” and “seed positioned within the interior volume”.

Regarding applicant's argument that Burbridge discloses a bottle and not a bag as claimed, there is no structure in applicant's claims that distinguish the claimed bag from the bottle of Burbridge.

13. Applicant's arguments with respect to claims 4-7 and 16 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jes F. Pascua  
Primary Examiner  
Art Unit 3727

JFP